

MEMORANDUM OF AGREEMENT
BETWEEN
U.S. ARMY CORPS OF ENGINEERS-ST. PAUL DISTRICT
U.S. ENVIRONMENTAL PROTECTION AGENCY- REGION V
U.S. FISH AND WILDLIFE SERVICE- GREEN BAY OFFICE
AND WISCONSIN DEPARTMENT OF NATURAL RESOURCES

CONCERNING THE ADOPTION OF
GUIDELINES FOR WETLAND COMPENSATORY MITIGATION IN WISCONSIN

Whereas, wetland compensatory mitigation is required by the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) for some activities permitted through the federal Clean Water Act, Section 404.

Whereas, the U.S. Fish and Wildlife Service (FWS) has a consultation role in the Section 404 permitting process.

Whereas, the Wisconsin Department of Natural Resources (DNR) is directly involved in the Section 404 process through its water quality certification responsibilities under Section 401 of the Clean Water Act and may consider compensatory mitigation in wetland decision making under Chapters NR 103 and NR 299, Wis. Adm. Code, and pursuant to Chapter NR 350, Wis. Adm. Code.

Whereas, prior to February 2002, there has not been a single document providing guidance on wetland compensatory mitigation in Wisconsin for agencies, permit applicants and the public.


Whereas, the COE, EPA, FWS, and DNR have been working with an advisory committee to develop statewide guidelines for compensatory mitigation.

Whereas, the COE Regulatory Guidance Letter (RGL) No. 01-1, dated October 31, 2001, includes definitions for “restoration”, “enhancement”, and “creation” (the RGL uses the term “Establishment”) that technically differ from the definitions in ch. NR 350, Wis. Adm. Code.

The undersigned agencies do hereby agree that:

1. All evaluations of wetland compensatory mitigation will consider the *Guidelines for Wetland Compensatory Mitigation in Wisconsin*, Wisconsin Department of Natural Resources Publication SS-961-2002.
2. The concepts for compensation site crediting relative to “restoration”, “enhancement”, and “creation” activities embodied by the *Guidelines for Wetland Compensatory Mitigation in Wisconsin* and RGL 01-1 are comparable though the actual definitions of these terms are somewhat different in the two documents.
3. The COE is the lead agency for compensatory mitigation decisions for project activities permitted through Section 404 of the Clean Water Act. The DNR is the lead agency for project activities permitted through Section 281.36, Wis. Stats., for “nonfederal” wetlands.

4. A Mitigation Oversight Committee (MOC), comprised of one representative from each signatory agency, shall meet in person or via conference call at least once each year to review the status of banks and bank sites, to discuss issues brought forth by the dispute resolution process (outlined in #5), and to discuss needs for amendments to the *Guidelines for Compensatory Mitigation in Wisconsin*.
5. Disputes between signatory agencies shall be resolved through the following conflict resolution process:
 - a. Issues should be resolved at the most de-centralized level possible.
 - b. Disagreements at the de-centralized levels may be elevated by any signatory agency to the MOC.
 - c. The goal is for decisions of the MOC pertaining to programmatic, site-specific or bank-specific issues to be by consensus, however the COE shall make the final determination in cases involving Section 404 compliance.
 - d. If an issue cannot be resolved by the MOC by a consensus, then the lead agency shall document, in writing, the facts in the dispute and provide a summary of the issue to all members prior to making its final decision.
6. Any changes to *Guidelines for Wetland Compensatory Mitigation in Wisconsin* shall be made by consensus and written agreement of the signatory agencies.
7. Nothing in this document is meant to diminish, modify or otherwise affect the statutory or regulatory authorities of any agency.
8. This agreement shall take effect upon the date of the last signature below and will continue in effect until modified or revoked by consensus agreement of all parties.

 29 May 02
Colonel Robert L. Ball
District Engineer, St. Paul District
U. S. Army Corps of Engineers


Kevin Pierard, Chief
Watersheds and Wetlands Branch
US Environmental Protection Agency Region V


Janet Smith, Supervisor
Green Bay Field Office
US Fish and Wildlife Service


Darrell Bazzell, Secretary
Wisconsin Department of Natural Resources